

# **EXHIBIT 4**

<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 S.O.I.TEC SILICON ON INSULATOR) 5 TECHNOLOGIES S.A. and ) 6 SOITEC USA, INC., ) 7 Plaintiffs and ) 8 Counterclaim ) 9 Defendants, ) 10 vs. ) Civil Action No.:05806-KAJ 11 ) 12 MEMC ELECTRONIC MATERIALS,INC.) 13 ) 14 Defendants and ) 15 Counterclaim Plaintiff.) 16 17 VIDEOTAPED DEPOSITION OF EDWARD HEJLEK 18 TAKEN BY MICHAEL BRODY 19 ON BEHALF OF THE PLAINTIFF 20 OCTOBER 23, 2007 21 22 (Attorney's Eyes Only) 23 24 REPORTED BY CINDY R. MESSINA 25 CERTIFIED SHORTHAND REPORTER CERTIFIED COURT REPORTER</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: 2 3 ON BEHALF OF THE PLAINTIFFS AND 4 COUNTERCLAIM DEFENDANT SOITEC: 5 6 Winston &amp; Strawn LLP 7 Mr. Michael Brody, Esq. 8 35 West Wacker Drive 9 Chicago, Illinois 60601 10 11 ON BEHALF OF THE DEFENDANT AND 12 COUNTERCLAIM PLAINTIFF MEMC: 13 14 Senniger Powers 15 Mr. Mark Vander Tuig, Esq. 16 Mr. Robert Evans, Esq. 17 One Metropolitan Square 18 16th Floor 19 St. Louis, Missouri 63102 20 ON BEHALF OF THE PLAINTIFFS AND 21 COUNTERCLAIM DEFENDANT SOITEC: 22 23 Jacques Elie Levy 24 Parc technologique des Fontaines 25 Bernin 38926 Crolles Cedex, France ON BEHALF OF THE PLAINTIFFS AND COUNTERCLAIM DEFENDANT SOITEC: Edwards, Angell, Palmer &amp; Dodge LLP Mr. George W. Neuner 101 Federal Street Boston, Massachusetts 02110 Also present: Richard Brophy, Esq.</p>
<p style="text-align: right;">Page 2</p> <p>1 UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 S.O.I.TEC SILICON ON INSULATOR) 5 TECHNOLOGIES S.A. and ) 6 SOITEC USA, INC., ) 7 Plaintiffs and ) 8 Counterclaim ) 9 Defendants, ) 10 vs. ) Civil Action No.:05806-KAJ 11 ) 12 MEMC ELECTRONIC MATERIALS,INC.) 13 ) 14 Defendants and ) 15 Counterclaim Plaintiff.) 16 17 DEPOSITION OF EDWARD HEJLEK, produced, 18 sworn, and examined on the 23rd day of October, 2007, at 19 the Offices of Senninger Powers, One Metropolitan Square, 20 16th Floor, in the City of St. Louis, State of Missouri, 21 before Cindy R. Messina, Certified Court Reporter within 22 and for the State of Missouri, in a certain cause now 23 pending In The United States District Court For the 24 District of Delaware, S.O.I.Tec Silicon on Insulator 25 Technologies S.A. and SOITEC USA, Inc., Plaintiffs and Counterclaim Defendants, vs. MEMC Electronic Materials, Defendant and Counterclaim Plaintiff.</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX 2 WITNESSES 3 Page 4 EDWARD HEJLEK FOR DEFENDANT 5 Direct Examination by Mr. Brody 6:2 6 EXHIBITS 7 For Plaintiff: 8 2 Amended Notice of Deposition that 9 Was filed in Delaware Court on 10 October 19, 2007 11 Identified 12:20 12 3 Copy file history that led to the 13 302 patent, United States Patent 14 5919302 15 Identified 43:23 16 4 Copy of the prosecution history for 17 the 104 patent 18 Identified 119:24 19 5 Document bearing Bates Numbers 20 SP01254 through 1292 21 Identified 123:2 22 6 Document bearing Bates Numbers 23 SP01413 through SP01418, Senninger 24 Powers Time Records 25 Identified 123:5 7 Privilege log provided by MEMC Identified 127:9 8 MEMC's Responses to SOITec's First Set of Interrogatories Identified 149:8 9 United State's Patent File History 6236104 Prior Art, Volume 2 Identified 189:1 10 United States Patent 6287380</p>

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1 (Pages 1 to 4)

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1 that you had given a deposition or two prior to this?

2 A. I have been deposed previously.

3 Q. How many times?

4 A. Several.

5 Q. Several as in 20, several as in 3?

6 A. No, less than 10.

7 Q. When was the most recent deposition?

8 A. May of this year.

9 Q. Okay. So it's all pretty fresh, I guess.

10 Let me just walk through a couple of ground rules.

11 Everybody does these things a little bit different, but

12 at least we can try to get on the same page for the

13 logistics of the day.

14 I will warn you that, as I have already

15 done, I occasionally garble questions and am a little

16 less clear about things than I would like to be. I also,

17 notwithstanding 25 years of practice, still tend to

18 mumble when I ask questions, so I can almost guarantee

19 you there will come a point during the day that I will

20 ask a question it doesn't make sense, you can't hear or

21 you don't understand. I'm happy to rephrase any question

22 that I ask, but I can't know you don't understand unless

23 you tell me, so will you let me know if you don't

24 understand a question?

25 A. I'll do my best.

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1 Q. The second thing that's an unfortunate

2 reality of these situations is that i'm going to be

3 asking about events that happened 10 and a dozen years

4 ago. I realize that human memory is fallible, and I know

5 you prepared for today's deposition but it's certainly

6 not implausible that I'll ask you a questions that you

7 don't recall off the top of your head, but you know there

8 is a piece of paper or a document that might refresh your

9 recollection. I brought a fair amount of stuff with me

10 today, and I can lay my hands on some more, so if there

11 is something that would help you respond to a question

12 that would refresh your recollection as to a point I'm

13 happy to do my best to try and and find it for you and

14 show it to you, but again, I can't know unless you tell

15 me, so will you let me know if there is a document that

16 would help you respond to a question?

17 A. If I remember what the document would be

18 that would help.

19 Q. Okay. Can't ask for more than that, which

20 brings us to my next point. I am going to ask you about

21 a little bit of history today, and I do expect you to

22 have done some preparation in planning for today's

23 deposition pursuant to the rules, but I do understand

24 that sometimes I ask questions for which you don't

25 generally know the answer, and all you can do is

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1 speculate. As a rule I really don't want you to

2 speculate. I just want you to give me your best

3 recollection or your best estimate or your best

4 understanding as to a matter. So unless I specifically

5 ask you to, will you agree with me that the responses you

6 give will not be speculation, but they will be your best

7 knowledge?

8 A. I'm not inclined to speculate.

9 Q. Okay. I may once or twice ask you to do

10 it just to, you know, to try and get a lead on something,

11 but unless I specifically ask you will you understand

12 that I'm not asking for speculation?

13 A. Understood.

14 Q. My guess is it will be a fairly long day.

15 Even if it breaks at noon it always feels like a long

16 day. And I don't mean it to be an endurance contest, so

17 if you need a break for any reason I'm happy to

18 accommodate that. I may ask you to let us finish a train

19 of thought, but I will break as soon as I can. Will you

20 tell me know if you need a break?

21 A. Of course.

22 A. You are represented today by Mr. Vander

23 Tuig; is that correct?

24 A. Correct.

25 Q. I'm confident we're going to ask questions

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1 that touch on the privilege, and I'm happy to let you

2 break to speak with him if you feel you need to do that

3 in order to understand whether to assert the privilege in

4 response to a question.

5 Again, I may ask you to finish and respond

6 to a question or finish a thought, but I will break as

7 soon as I can. But I can't know if you want to talk to

8 him unless you tell me. So will you let me know if you

9 want to talk to Mr. Vander Tuig?

10 A. Sure.

11 MR. BRODY: I guess that's it. Could you

12 mark that notice as Plaintiff's Exhibit Deposition

13 Exhibit 2, please.

14 (Plaintiff's Deposition Exhibit 2 was

15 marked for identification.)

16 Q. (By Mr. Brody) Mr. Hejlek, I've asked the

17 court reporter to hand to you what's been marked as

18 Plaintiff's Exhibit Deposition Exhibit 2 which is an

19 Amended Notice of Deposition that was filed in the

20 Delaware Court on October 19th of 2007. It's seven pages

21 in length. Do you have that in front of you, sir?

22 A. I do.

23 Q. And have you seen that document before?

24 A. I have.

25 Q. Okay. And at the back of the document

3 (Pages 9 to 12)

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1 there is an Exhibit C which indicates that you have been  
2 tendered as a witness -- oh, my goodness, they put the  
3 wrong numbers in. It says you have been tendered as a  
4 witness. We're almost ready. It says you have been  
5 tendered as a witness with respect to Topics 6, 7, 11 and  
6 12 on Exhibit A. And then it says Mr. Sadasivam is going  
7 to speak with respect to Exhibit B, but I think actually  
8 you have been tendered with respect to Exhibit B; is that  
9 correct?

10 A. That is my understanding, with the  
11 exception of Topics 6 and 7 on Exhibit B.

12 MR. VANDER TUIG: Mr. Brody, we served  
13 objections where we indicated that we were not going to  
14 tender a witness for 6 or 7.

15 MR. BRODY: Okay. Are you making that  
16 objection on the grounds of privilege?

17 MR. VANDER TUIG: No, on the grounds that  
18 Senniger Powers is not in the best position to speak on  
19 these topics. The respective inventors are as set out --

20 MR. BRODY: All right. That's fair  
21 enough. I'm going to be asking you some questions about  
22 -- him some questions about the drafting of the  
23 application and the prosecution of those patents, which  
24 will touch on Senninger's investigation of inventorship  
25 and MEMC's, and I hope you'll be in a position to respond

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1 to those questions, but I'll understand that you are not  
2 tendering him with respect to Exhibits 6 and 7, or Topics  
3 6 and 7.

4 MR. VANDER TUIG: And with respect to the  
5 prosecution and the definition of S.O.I. Application and  
6 bulk silicon application there was some correspondence  
7 between our office and yours where we narrowed it to the  
8 application that led to the 104 patent and the 302 patent  
9 and their provisionals.

10 MR. BRODY: Right.

11 Q. (By Mr. Brody) So with those amendments  
12 are you here to testify on behalf of MEMC with respect to  
13 Topics 6, 7, 11 and 12 on Exhibit A?

14 A. Correct.

15 Q. Are you here to testify on behalf of  
16 Senniger Powers with respect to Topics 1 through 5 on  
17 Exhibit B?

18 A. Correct.

19 Q. What did you do to prepare for today's  
20 deposition?

21 A. Reviewed the file histories of the patent  
22 and suit, reviewed the file history of, is it the 302  
23 patent? I forget. The 302 patent, looked through the  
24 prior art that was cited in there, just get familiar with  
25 it, deposition notice.

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1 Q. Anything else?

2 A. Not that I presently recall.

3 Q. Did you talk to anybody in connection with  
4 your preparation for today's deposition?

5 A. Yes.

6 Q. Who did you talk to?

7 Q. I talked with Mr. Vander Tuig and Mr.  
8 Evans, and I spoke with one of my associates, Richard  
9 Schuth.

10 Q. How do you spell Schuth?

11 A. S-C-H-U-T-H.

12 Q. Did you talk with Mr. Vander Tuig and Mr.  
13 Evans together?

14 A. Yes.

15 Q. Once or more than once?

16 A. More than once.

17 Q. When?

18 A. Wednesday or Thursday of last week,  
19 yesterday, and this morning.

20 Q. How long did you meet on Wednesday or  
21 Thursday of last week?

22 A. An hour.

23 Q. How long did you meet yesterday?

24 A. On the order of an hour, maybe an hour and  
25 a half. I believe we met twice last week.

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1 Q. How long did you meet this morning?

2 A. 30 minutes.

3 Q. The one hour you gave me for last week,  
4 was that the total for both meetings, or an hour each  
5 meeting?

6 A. Oh, they were probably each on that order.

7 Q. So on the whole you've spoken with Mr.  
8 Vander Tuig and Mr. Evans for a total of, let's see,  
9 three and a half to four hours?

10 A. Several hours, yeah.

11 Q. Did they show you any documents other than  
12 the prior art cited in the file history for the 104 and  
13 302 patents?

14 A. Deposition notice and the patents,  
15 themselves.

16 Q. So the documents you have looked at are  
17 the 104 and 302 patents, the file history for those  
18 patents, the prior art cited in those patents, and the  
19 deposition notice?

20 A. Correct.

21 Q. And was anybody else present when you met  
22 with Mr. Vander Tuig and Mr. Evans?

23 A. No.

24 Q. Did you take any notes during those  
25 meetings?

4 (Pages 13 to 16)



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1 certainly do not recall it. Can I say categorically he  
2 did not? No, I don't recall that.

3 MR. BRODY: Let's mark this as Exhibit 8.  
4 (Plaintiff's Deposition Exhibit 8 was  
5 marked for identification.)

6 Q. (By Mr. Brody) Mr. Hejlek, I have had the  
7 court reporter mark as Plaintiff's Deposition Exhibit 8  
8 MEMC's Responses to Soitec's First Set of Interrogatories  
9 No. 1 through 16, which is a 16-page document. Do you  
10 have that document in front of you, sir?

11 A. I do.

12 Q. Can you turn to Page 6 of the document.  
13 And Interrogatory 5 requests, "For each invention covered  
14 by each asserted claim," and in this case I believe the  
15 asserted claims are 1, 9 and 10 of the 104 patent.  
16 "describe in detail the conception of the invention,  
17 reduction of the invention to practice, and diligence in  
18 reducing the invention to practice."

19 And then MEMC interposes some objections.  
20 And then on Page 7 the response states, "Dr. Robert J.  
21 Falster conceived of the invention covered by claims 1  
22 and 9 prior to a meeting with Soitec on October 30, 1996.  
23 Dr. Falster had previously conceived and reduced to  
24 practice a CZ silicon wafer containing an axially  
25 symmetric region substantially free of agglomerated

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1 intrinsic point defects where the predominate intrinsic  
2 point defect was interstitial. Dr. Falster believed such  
3 a wafer would provide better performance than the wafers  
4 used by the integrated circuit industry. In advance of  
5 his meeting with Soitec on October 30, 1996 Dr. Falster  
6 knew that Soitec's primary product at the time was the  
7 S.O.I. product. Dr. Falster conceived of using his CZ  
8 silicon wafer as the donor wafer to provide the device  
9 layer in the Soitec S.O.I. product prior to the meeting.  
10 This was a conception of claims 1 and 9."

11 Do you see that passage?

12 A. I see that.

13 Q. Is that something you were told by Dr.  
14 Falster during the course of the 104 prosecution?

15 A. No.

16 Q. Okay. Is reading it today, is that the  
17 first time you became aware of that description of the  
18 conception of those claims?

19 A. No.

20 Q. When did you first learn that those were  
21 the circumstances under which the invention was  
22 conceived?

23 A. Subsequent to the issuance of the 104  
24 patent it was somehow brought to my attention that Soitec  
25 notified sales people, customers, that sort of thing,

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1 that there was a question about inventors.

2 Q. Okay. Do you recall that happening in  
3 connection with the filing of this lawsuit?

4 A. No, it predated.

5 Q. Well, the patent issued in May of 2001,  
6 and the complaint and the lawsuit was filed, I believe,  
7 in 2005. So I take it it was someplace between those two  
8 events?

9 A. Correct.

10 Q. Who told you about Soitec, Soitec's  
11 claims?

12 A. I do not recall.

13 Q. Do you recall what customers were  
14 involved?

15 A. No.

16 Q. Did -- was Mr. Falster the one who  
17 described to you the circumstances under which he  
18 conceived the invention, or did somebody relay to you  
19 what he had told them?

20 MR. VANDER TUIG: I'll object to the  
21 extent that it calls for disclosure of attorney/client  
22 communications.

23 MR. BRODY: Well --

24 A. I can answer the question without  
25 getting into that. I had direct conversations with Bob

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1 Falster.

2 Q. (By Mr. Brody) Okay. Did Mr. Falster,  
3 did his description of the conception of the invention  
4 differ in any way from what's disclosed in MEMC's  
5 Interrogatory Response to Interrogatory No. 5?

6 A. What is described here is consistent with  
7 what my recollection is.

8 Q. Did he give you additional information  
9 about the conception?

10 MR. VANDER TUIG: Object to the extent it  
11 calls for disclosure of attorney/client communication.

12 MR. BRODY: That question I don't think  
13 calls for disclosure of any substance. I'm just asking  
14 if there was any additional substance disclosed, not what  
15 it was, although that's going to be my next question.

16 A. Yes, he shared more than what's here with  
17 me.

18 Q. (By Mr. Brody) What else did he share with  
19 you?

20 MR. VANDER TUIG: Object, calls for  
21 disclosure of attorney/client communication.

22 MR. BRODY: Well, setting aside whether it  
23 does or it doesn't, I don't see how it can be privileged  
24 if half of the communication has been disclosed already.  
25 You can't disclose part of a communication and not the

38 (Pages 149 to 152)